Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006	)	AU Docket No. 06-30

COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. ("T-Mobile") commends the Commission for the timely release of the captioned Public Notice ("Auction PN")[1] and its decision to commence the auction of Advanced Wireless Services ("AWS") licenses in the 1710-1755 and 2110-2155 MHz bands on June 29, 2006. T-Mobile advocates the use of a single simultaneous multiple round auction with full transparency as to upfront payment amounts, license selections and round results.

I. INTRODUCTION.

T-Mobile is an independent CMRS provider and the smallest of the four nationwide wireless carriers.[2] T-Mobile operates broadband PCS systems using the Global System for Mobile Communications Technology (GSM) throughout the United States. T-Mobile competes

[1] FCC Public Notice, *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006, Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures,* AU Docket No. 06-30, DA 06-238 (rel. Jan. 31, 2006) ("Auction PN"). The last legal impediment to commencing the auction during June of this year was removed when, on December 27, 2005, the NTIA satisfied the requirements of the Commercial Spectrum Enhancement Act (CSEA) by providing to Congress and the Commission estimated costs and other key information related to the relocation of Federal incumbents from the AWS band.

[2] T-Mobile holds licenses covering more than 275 million people in 46 of the top 50 U.S. markets and currently serves more than 21.7 million customers. Via its HotSpot service, T-Mobile also provides Wi-Fi (802.11b) wireless broadband Internet access in more than 6,700 convenient public locations, such as Starbucks coffee houses, airports, and airline clubs, making it the largest carrier-owned Wi-Fi network in the world.

vigorously with larger nationwide wireless carriers, as well as the many regional wireless carriers that operate throughout the United States.

In order to continue to be aggressive competitors, T-Mobile and other smaller wireless carriers rely on access to additional spectrum to meet consumer demand for an increasing range of affordable wireless services, including Third Generation (3G) services. As the fourth largest nationwide wireless carrier in the United States, T-Mobile has significantly less spectrum in most markets than the three largest national carriers.[3] It is important that T-Mobile and other smaller carriers have access to AWS spectrum for their wireless operations without procedural hurdles or auction experimentation that could either delay the licensing of this spectrum or reduce the ability of bidders to acquire the spectrum needed to expand and supplement their businesses.

II. T-MOBILE STRONGLY SUPPORTS THE JUNE 29, 2006, AUCTION START DATE.

T-Mobile strongly supports the commencement of the auction as announced in the Auction PN.[4] The FCC's Commissioners individually have recognized the importance of commencing the auction as soon as possible,[5] and T-Mobile urges the FCC not to delay the auction for any reason. The substantial spectrum advantage enjoyed by the three largest wireless carriers as a result of recent merger activity and the increasing demand for mobile wireless

[3] Publicly available data show the following top 50 BTA-weighted spectrum positions: Cingular, 58 MHz; Sprint, 50 MHz (excludes Nextel's 800 and 900 MHz spectrum but includes the 10 MHz G block); Verizon, 42 MHz; and T-Mobile, 25 MHz. *See* Exane BNP Paribas, Deutsche Telekom Equity Research Report, at 17 (Dec. 8, 2005).

[4] Auction PN at 1.

[5] *See Implementation of Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, Further Notice of Proposed Rule Making, Docket No. 05-211, FCC 06-8 (Feb. 3, 2006) ("DE NPRM"), Separate Statements of Commissioners Copps ("I said before that I am committed to sticking to our schedule for the AWS auction.") and Adelstein ("I have repeatedly stated my commitment to try to avoid unnecessary delays to the AWS auction.").

offerings underscore the need to put valuable AWS spectrum into the hands of smaller nationwide, regional and rural carriers as soon as possible to promote continued competition and product choice in the marketplace for advanced services.[6]

As discussed further below, T-Mobile supports auctioning the AWS licenses in a single auction with full transparency as to license selections, upfront payments and round-by-round results. T-Mobile supports most of the other auction procedures described in the Auction PN, including: 1) upfront payments and minimum opening bids in the amount of $0.05/MHz/pop; 2) a two-stage activity rule with activity requirements of 80 percent in Stage One and 95 percent in Stage Two; 3) bidding increments in any of the nine proposed amounts; 4) three activity rule waivers and bid withdrawals in two rounds; and 5) setting interim and additional default penalties each in the amount of 10 percent of applicable bids. These procedures have precedent in previous auctions of wireless spectrum and are consistent with best practice, and T-Mobile supports use of procedures that have proven successful in the past.[7]

III. T-MOBILE SUPPORTS THE FCC'S PROPOSAL TO AUCTION THE AWS LICENSES IN A SINGLE AUCTION USING STANDARD FORMAT.

T-Mobile urges the FCC to implement its proposal to auction all AWS licenses in a single auction using the standard simultaneous multiple-round ("SMR") format. The AWS auction is the most significant CMRS auction in a decade in terms of number of licenses, total

[6] *See* attached Declaration of Peter Cramton (Feb. 14, 2006) ("Cramton Decl.") ¶¶ 4, 29.

[7] *See Id.* ¶ 27. Auction No. 58, for example, utilized full transparency and the same upfront payment amount, minimum bid (for markets with license area populations equal to or exceeding 2 million), number of stages and activity requirements, bidding increments in any of nine amounts, and number of activity rule waivers and bid withdrawals. *See* FCC Public Notice, *Broadband PCS Spectrum Auction Scheduled for January 12, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 58*, 19 FCC Rcd 18190 (WTB 2004). The rules were amended earlier this year to give the Commission discretion to set the defaults between 3 and 20 percent. 47 C.F.R. § 1.2104(g).

spectrum and projected revenues.[8] The AWS bandplan, with three different geographic license areas, two different spectral sizes and more than one thousand total licenses, already presents bidders with complexities and challenges. It is vitally important that the FCC disseminate the licenses in a simple, flexible and rational manner, following familiar rules and procedures that have a record of success in putting licenses in the hands of those entities that value them most. In this way, the Commission can fully unlock the advantages of the revised AWS band plan it adopted last year, which provides bidders several alternatives to achieve their objectives.[9]

T-Mobile recognizes that potential synergies and other benefits of combinatorial bidding and multiple auctions may exist in the proper context. The AWS auction, however, is too large, complex and significant for the Commission to introduce any such major innovation or experimentation. The FCC has acknowledged that package bidding is "complex"[10] and creates "difficulties,"[11] and such complexities and difficulties would be exacerbated in a dual auction format. For example, eligibility management between the two auctions and arbitraging between licenses would be extremely challenging, have no real precedent in practice, and could lead to problems during the auction. The FCC has stated that a single, traditional "SMR auction format, together with a bandplan which offers bidders the option to bid on several blocks of large regional licenses, will provide bidders with the opportunity to create efficient aggregations of licenses . . . ."[12] The FCC has also confirmed that "including these [three] different licensing area sizes in the band plan for this spectrum would provide carriers with the flexibility to tailor

[8] *See* Cramton Decl. ¶ 5; *see e.g.*, DE NPRM, Separate Statement of Commr. Adelstein at 2.

[9] *See* Cramton Decl. ¶ 5.

[10] Auction PN at 5.

[11] *Id.*

[12] *Id.*

their licensing areas to meet their individual business needs and goals."[13] The uncertainties and complexities of combinatorial bidding would present enormous challenges in implementing the necessary rules at this late date and risk delaying the start of the auction. The FCC should utilize an SMR design because it has been fully "road tested," and a single auction will allow bidders, large and small, to have the greatest degree of flexibility to consider and bid on alternatives.

IV. THE AWS AUCTION SHOULD BE TRANSPARENT, WITH PUBLIC DISCLOSURE OF BIDDERS' LICENSE SELECTIONS, UPFRONT PAYMENTS AND ROUND-BY-ROUND RESULTS.

T-Mobile urges the Commission (as it has in so many successful auctions) to conduct the AWS auction with full disclosure of bidders' license selections and upfront payments prior to auction commencement, and bidder identities and their bid amounts at the end of each round, and not to experiment with limitations on this information.

In the Auction PN, however, the Commission has proposed not to reveal until the close of the auction (1) bidders' license selections on their short-form applications and the amount of their upfront payments, (2) the amounts of non-provisionally winning bids and the bidder identities, and (3) the identities of bidders making provisionally winning bids. Thus, the only information available during the auction would be the list of applicants and the gross amount of the provisionally winning bids.[14] The Commission reasons that this approach strikes a balance between withholding information that is likely to foster anticompetitive conduct and making essential information available to bidders "so that the multiple round structure of the auction enables efficient outcomes to emerge."[15]

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[13] *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Order on Reconsideration, 20 FCC Rcd 14058, 14060-61 (2005) (citation omitted).

[14] Auction PN at 6-7.

[15] *Id.* at 7.

Although T-Mobile understands the importance of guarding against anticompetitive conduct in the auction context, conducting a wide range of auctions with full transparency has worked successfully in the past, with only very limited evidence of collusive conduct. Similarly, any potential drawbacks of disclosing information (namely that bidders could use the information revealed over the multiple rounds to implement a division of licenses at lower than market prices and to retaliate against winning bidders)[16] are outweighed by the benefits of transparency, as discussed below. The circumstances of the AWS auction simply do not justify departure from the tried-and-true practices, and the risks of experimentation in the context of such a significant, complex auction are too high.[17]

Failure to disclose bidder information will have a discriminatory effect by increasing disparities in information that already may be skewed.[18] Most potential bidders know that T-Mobile has certain spectrum needs and will be able to estimate how much spectrum T-Mobile is targeting in particular markets. The interests of other bidders in AWS spectrum likely will be much harder to gauge. Lack of transparency will compound the disparity of information, disadvantaging T-Mobile.[19]

Additionally, an extremely serious problem could arise if a confidentiality leak occurred during the auction. The FCC would face an enormous challenge in preventing leaks. A conservative estimate sets the duration of the AWS auction at six weeks or longer, and the

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[16] *Id.* at 6. *See* Cramton Decl. ¶¶ 22-23, 25-26 (Professor Cramton maintains that bidders' ability to split markets has been mitigated and that retaliatory behavior is infrequent and of limited success).

[17] *See* Cramton Decl. ¶¶ 24, 28.

[18] *Id.* ¶ 15.

[19] *Id.* Building an informational imbalance into the auction also thwarts the fundamental purpose of the anticollusion rule to foster a level competitive playing field during auctions. *See Amendment of Part 1 of the Commission's Rules--Competitive Bidding Procedures*, Seventh Report and Order, 16 FCC Rcd 17546, 17546-47 (2001).

collusion restrictions begin on the deadline for filing shortforms (typically 4 to 8 weeks prior to auction start) and end on the deadline for downpayments (another 4 to 8 weeks after auction end), for a total "quiet" period of at least four months. Successes with sealed or anonymous private commercial auctions in other contexts, which are either instantaneous or completed in a very short timeframe, offer no useful precedent for the AWS auction.[20] Factors in addition to the duration of the AWS auction will compound the difficulties in preserving confidentiality. Investment analysts will make it their mission to decipher the identities of bidders and market interests.[21] Should a leak occur, the Commission might be required to cancel the auction and conduct a new auction at a later date. That scenario would cause serious delays in the licensing, build out and operation of the spectrum, reducing competition in the marketplace and harming consumers.[22] It could also result in lower prices for the spectrum in a subsequent auction, in view of the taint of the cancellation of the prior auction. At the very least, and even if impermissible communication escaped detection, post-auction market distortions could result. The putative benefits of withholding information simply do not justify incurring the real costs of putting such a significant auction at risk.

Further problems will flow from restricting information about bids and bidders during the course of the auction. The subject matter of the AWS auction is highly complex, and the calculus of rational bidding depends upon knowledge of bidders about licenses in the same and

[20] *See* Cramton Decl. ¶ 17 n.3.

[21] Such inquiry is legitimately linked to the shareholders' right to know the bidding decisions of public companies in making buy and sell decisions, as further discussed below. The extent of communications among bidders in sealed-bid Treasury auctions suggests the difficulty of maintaining secrecy in the AWS auction. *See* Cramton Decl. ¶ 17 n.3. Because the anticollusion rule covers statements made in interviews with reporters, s*ee* Capitol Broadcasting Company, 19 FCC Rcd 20854 (2004), information disclosed in analyst reports could also form the basis of collusion.

[22] *See* Cramton Decl. ¶ 17.

adjacent geographies--the success of secrecy in auctions for relatively simple commodities as Treasury bills and electric units offers no useful precedent. Transparency provides useful information on the value of licenses to bidders and will promote rational bidding and can result in higher auction revenues.[23] For example, bidders on a particular license will want to know what type of service competitors will use in that market or neighboring markets.[24] A bidder might value a license more highly if it expects to be the only carrier in that market using its own technology.[25] Similarly, bidders can better evaluate interference issues if they know who is bidding on which bands,[26] particularly because some incumbents in the AWS band will bid in the auction. Small carriers, in particular, need to know whether large companies that would roll out the same technology in the AWS band are participating, in order to be sure that a large carrier using the same technology will create a sufficient market for that equipment and to implement business plans to partner with larger carriers.[27]

Second, in view of the geographic scope and expected high prices for the REAG licenses in the AWS auction, it is anticipated that many publicly-owned companies will participate and ultimately emerge as successful bidders. Current and prospective stockholders are entitled to know what their company is doing in the auction so that they can make informed decisions about whether to buy or sell stock interests.[28]

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[23] *Id*. ¶ 12.

[24] *Id.*

[25] *Id.*

[26] *Id.* ¶ 13

[27] *Id*. ¶ 12

[28] *Id*. ¶ 16.

V. CONCLUSION.

For the foregoing reasons, T-Mobile (1) supports the commencement of the AWS auction on June 29, 2006 and urges the Commission to make every effort to keep the auction on track, (2) supports the Commission's proposals on upfront payments and minimum opening bids in the amount of $0.05/MHz/pop, a two stage activity rule with activity requirements of 80 percent in Stage One and 95 percent in Stage Two, bidding increments in any of nine different amounts, three activity rule waivers and bid withdrawals in two rounds, and setting interim and additional default penalties each in the amount of 10 percent of applicable bids, (3) urges the Commission to auction all of the AWS licenses in a single SMR auction without package bidding, and (4) stresses the importance of the use of tried-and-true transparency as to upfront payments, license selections and round-by-round identity of bidders.

Respectfully submitted

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